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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 59 OF 2021
WITH
INTERIM APPLICATION NO. 10935 OF 2024
IN
SECOND APPEAL NO. 59 OF 2021**

Gajanan Kashinath Mhatre

.....Appellant

Vs.

Ashok Kashinath Mhatre and Ors

.....Respondents

Mr. Rupesh Lanjekar for the appellant
Mr. S. R. Pge for respondent nos. 3 to 5

CORAM : GAURI GODSE, J.

DATE : 6th JANUARY 2025

ORDER:

1. Heard learned counsels for the parties. The second appeal challenges the concurrent judgments and decrees granting declaration in favour of the plaintiffs that the Will executed by the original owner Kashinath in favour of the plaintiffs is a validly executed document. Hence, the plaintiffs are declared as owners of the suit property based on the Will.

2. Learned counsel for the appellant submits that the plaintiffs' title

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is accepted by both the Courts only based on the Will executed by Kashinath. He submits that the plaintiffs failed to prove that the suit property was self acquired property of Kashinath. Hence, by way of Will, Kashinath was not entitled to bequeath the property in favour of the plaintiffs. He submits that both the Courts have erroneously placed burden upon the defendants to prove that the suit property was not self acquired property of Kashinath. He, therefore, submits that the second appeal would require consideration on the ground that both the Courts have not properly considered the evidence on record and erroneously shifted the burden upon the defendants.

3. Learned counsel for the appellant relied upon the order passed by Sub-Divisional Officer (SDO) cancelling the mutation entry in favour of the plaintiffs. He submits that cancellation of the mutation entry in favour of plaintiff no. 1 is not further challenged. He further submits that the copy of order passed by the learned SDO was produced before the first Appellate Court. He, thus, submits that the said order supports the defendants' contentions that the plaintiffs would not be entitled to seek exclusive ownership and possession over the suit property.

4. Learned counsel for the plaintiffs supports the impugned

judgments and decrees. He submits that based on the Will, plaintiff no. 1's name was entered in the revenue record. He submits that mutation entry was cancelled on an appeal filed by the defendants. He submits that since the mutation entry was cancelled in the revenue proceedings, the plaintiffs instituted suit for declaration of title based on the Will. He submits that the sale deed in respect of the house property was in the name of Kashinath and 32G proceedings and certificate under section 32M of The Maharashtra Tenancy and Agricultural Lands Act, 1948 (Tenancy Act) was also in the name of Kashinath. He submits that the suit properties were acquired by Kashinath out of his own independent income. Hence, Kashinath had right to bequeath the entire suit property by way of a Will. He submits that both the Courts have accepted the validity of the registered Will, by examining the oral evidence adduced by the plaintiffs. He submits that the second appeal would not require any consideration by this Court.

5. To consider the rival submissions made by the parties, I have perused the reasons recorded by both the Courts as well as the order passed by the learned SDO relied upon by the learned counsel for the appellant. There is no dispute that Kashinath was working in Mumbai

and had his own independent income. The copies of the sale deed and the orders under section 32G are relied upon by both the Courts to accept Kashinath's title over the suit property. In view of these facts, both the Courts have rightly shifted the burden upon the defendants to prove that there was any joint family nucleus or that the suit property was not self acquired property of Kashinath. In view of the undisputed documents of title in the name of Kashinath and in the absence of any evidence regarding any joint family nucleus between the parties, the reasons recorded by both the Courts cannot be faulted. Both the Courts have examined the evidence on record and accepted the validity of the Will. I do not find any illegality or perversity in the reasons recorded by both the Courts. In view of the admitted facts regarding Kashinath's independent source of income, the sale deed in respect of the house property in the name of Kashinath and 32G Order and 32M certificate in the name of Kashinath, both the Courts have rightly accepted that the suit properties were self acquired properties of Kashinath.

6. The copy of the order passed by the learned SDO cancelling the mutation entry in the name of plaintiff no. 1 would not affect the title of Kashinath or the title of the plaintiffs based on the Will executed by

Kashinath. In view of the cancellation of the mutation entry by order dated 14th October 2010, the plaintiffs rightly instituted a suit for declaration of title on 23rd November 2009. Thus, there was no reason for the first Appellate Court to interfere with the trial Court's finding in view of the copy of the order passed by the learned SDO produced by the applicants before the first Appellate Court.

7. Both the Courts have correctly appreciated the documentary as well as oral evidence on record and correctly accepted Kashinath's title over the suit property. In view of these findings, both the Courts also correctly accepted the validity of the plaintiffs' title over the suit property based on the Will.

8. The arguments made on behalf of the appellants would, therefore, not require any consideration by this court in view of the concurrent findings recorded by both the Courts in favour of the plaintiffs.

9. The second appeal does not raise any substantial question of law. Hence, the second appeal is dismissed.

10. In view of dismissal of second appeal, Interim Application No. 10935 of 2024 is disposed of as infructuous.

[GAURI GODSE, J.]